IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2253 of 1993

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements?

2. To be referred to the Reporter or not?

3. Whether Their Lordships wish to see the fair copy of the judgement?

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?

5. Whether it is to be circulated to the Civil Judge?

DHANJIBHAI B. GOHEL

Versus

DISTRICT JUDGE, BHAVNAGAR

Appearance:

MR IS SUPEHIA for Petitioner

MR DA BAMBHANIA for Respondent No. 1, 2

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 13/11/97

ORAL JUDGEMENT

This petition preferred under Article 226 of the Constitution of India is directed against the order dated 31st January, 1992 made by the respondent No.1 herein, imposing penalty of "Compulsory retirement" upon the petitioner, and confirmed by the appellate authority i.e. the respondent No.2 herein on 7th August, 1992. The

facts leading to the present petition are as under :

2. The petitioner, at the relevant time was serving as a Senior Clerk in the court of the Chief Judicial Magistrate, Bhavnagar. On 30th July, 1987, a Memorandum of charge was issued against the petitioner containing some 9 charges. The nature of misconduct alleged to have been committed by the petitioner and proved by holding a disciplinary inquiry against him, amount to disposal of Muddamal articles for personal gain; falsification of the court record; destruction of the court record; procuring confidential communications in surreptitious manner; negligence in maintaining the record; bringing undue pressure upon the superior authority by administering threats and using oppresive language. In view of the above referred charges having been proved against the petitioner, under order dated 26th February, 1988, the petitioner was dismissed from service. Feeling aggrieved, the petitioner preferred an appeal before the respondent No.2. Under order dated 14th October, 1988, the said appeal was allowed. The respondent No.2 held that the petitioner was required to be furnished copy of the report of the Inquiry Officer before imposing penalty upon him and action of dismissing him from service was, therefore, contrary to the principles of natural justice and fair play. The matter was, therefore, remanded to the disciplinary authority i.e. respondent No.1 for hearing and decision afresh. The respondent No.1 thereafter served a copy of the inquiry report to the petitioner and after hearing him, under order dated 28th February, 1990 dismissed the petitioner from service. Feeling aggrieved, the petitioner preferred an appeal before the respondent No.2. The respondent No.2 under its order dated 17th July, 1991 partly allowed the appeal and remanded the matter to the respondent No.1 "to consider the case afresh in the light of the inquiry report and the evidence on record and the reply to the second show cause notice submitted by the appellant (present petitioner) after giving an opportunity of hearing to the appellant ". In view of the above order dated 17th July, 1991, the respondent No.1 considered the case afresh and imposed the penalty of compulsory retirement upon the petitioner as aforesaid.

3. Learned advocate Mr. Supehia has appeared for the petitioner and has challenged the impugned action of compulsory retirement of the petitioner on the following grounds :

(a) While imposing the punishment of compulsory

retirement, the disciplinary authority has relied upon the past records of the petitioner and factum of previous punishments without the knowledge of the petitioner.

(b) Several documents demanded by the petitioner were not furnished to him and the disciplinary action taken against the petitioner is, therefore, vitiated on account of violation of principles of natural justice and fair play.

(c) The disciplinary authority while imposing punishment, has relied upon the documents which were not part of the record and, thus, has relied upon extraneous material.

(d) The findings recorded by the Inquiry Officer are perverse.

4. Mr. Supehia has relied upon paragraph-34 of the impugned order imposing punishment upon the petitioner. In the said paragraph, the disciplinary authority has referred to the inquiries held against the petitioner in past and to three cases in which the petitioner was visited with punishment. The three cases in which the petitioner was visited with punishment are that of Inquiry No.1/72, Inquiry No. 18/79 and Inquiry No. 24/81. Mr. Supehia has submitted that at no point of time, the petitioner was informed about his past record and that the disciplinary authority intended to rely upon it for imposing punishment upon the petitioner. He has submitted that if at all the disciplinary authority wanted to rely upon such past records, the same should have been placed before the Inquiry Officer during the course of disciplinary action. He has further submitted that the Inquiry Nos. 18/79 and 24/81 which are referred to in the said paragraph, were never held against the petitioner, the question of any punishment pursuant to the said inquiries, therefore, would not arise. In support of his contention, he has relied upon the judgment of the Supreme Court in the matter of THE STATE OF MYSORE VS. V.K.MANCHE GOWDA (AIR 1964, SC 506). He has particularly relied upon paragraphs 7, 8 and 9 of the judgment. In the said matter before the Supreme Court, precisely the same question was under consideration i.e. whether the past record of the delinquent could have been relied upon for imposing punishment without bringing the same to the notice of the delinquent. It was argued that if it is intended to be relied upon for imposing punishment, it should be made specific charge in the

first stage of the inquiry itself and if it is not so done, it can not be relied upon after the inquiry is closed and the report is submitted to the authority entitled to impose the punishment. The said contention was rejected by the court. The court, in paragraph-8 of the judgment, held that, "...But nothing in law prevents the punishing authority from taking that fact into consideration during the second stage of the enquiry, for essentially it relates more to the domain of punishment rather than to that of guilt. But what is essential is that the Government servant shall be given a reasonable opportunity to know that fact and meet the same ". Mr. Supehia has also relied upon the judgment of this court in the matter of N.N.WAGHELA VS. NATIONAL TEXTILE CORPORATION GUJARAT LTD.(1997, 2 GLH, 234). In the said matter, while imposing punishment upon the delinquent, the respondent-Corporation had relied upon the report of the Vigilance Officer of the Corporation. The said report was not furnished to the delinquent before imposing penalty upon him. The court took the view that the disciplinary authority had relied upon extraneous material and the decision of the disciplinary authority was, therefore, vitiated. In the present case, the show cause notice issued upon the petitioner after closing of the inquiry by the Inquiry Officer has not been placed on the record, however, the same has been produced by the learned AGP Mr. Bambhania. It appears that the said show cause notice does not refer to the factum of punishments earlier imposed upon the petitioner under the above referred enquiries being Enquiry Nos. 1/72 , 18/79 and 24/81. Prima-facie, therefore, one would conclude that those punishments have been taken into consideration by the disciplinary authority without the knowledge of the petitioner herein. However, on closer scrutiny, that does not appear to be the case. The charge No.6 included in the chargesheet itself refers to the Censure issued against the petitioner in Enquiry No. 1/72 for using oppressive language and for administering threats It appears that the petitioner in that case had tendered an unconditional apology and had given an undertaking that he shall not repeat such behaviour and on his giving such undertaking, he was let-off by imposing a minor punishment of 'Censure'. Further Mr. Supehia has relied upon the reply to the show cause notice given by the petitioner. In paragraph-43 of the said reply, the petitioner has referred to three departmental enquiries in which he was exonerated and had also submitted the copies of the orders alongwith the said reply. Thus, the petitioner himself has relied upon his past record in his reply to the second show cause notice. It is well settled law that while imposing punishment upon a

delinquent, the disciplinary authority should also take into consideration the past records of the delinquent. In the present case, however, the past record does not appear to be favourable to the petitioner. I am, therefore, of the view that the petitioner was aware of his past record and of the fact that while considering the question of imposing punishment upon him, the disciplinary authority would take into consideration his past records also. It is not disputed that earlier also the petitioner was visited with punishment of "withholding of increment". Further, upon perusal of the memos of appeals preferred before the respondent No.2 in the years 1988, 1990 and 1992, I find that before the appellate authority no such contention was ever raised by the petitioner. The contention, therefore, requires to be rejected. On the facts recorded above, the principle laid down in the above referred two judgments shall have no applicability.

5. Mr. Supehia has relied upon the application made by the petitioner for furnishing certain documents to him and the reply given by the disciplinary authority, which are produced at pages 336, 339, 341, 343, 350, 366, 374, 391 and 398 of the paper-book. Be it noted that this contention was raised by the petitioner in his appeal preferred in the year 1988. However, since the matter was remanded for furnishing copy of the report of the inquiry officer, the contention was not dealt with by the respondent No.2. The same contention was again raised in the appeal preferred in the year 1990. The said appeal was partly allowed. The respondent No.2 considered the said appeal and held that the findings recorded by the disciplinary authority on charge No.1 was contrary to the evidence on record and the findings recorded by the Enquiry Officer. The matter was, therefore, remanded for decision afresh in view of the observations in the appellate order. The respondent No.2 issued directions as follows :

> " In the result, this appeal partly succeeds. The impugned order of dismissal passed by the disciplinary authority on 28th February, 1990 is set aside. The disciplinary authority is directed to consider the case afresh in the light of the inquiry report and the evidence on record and the reply to the second show cause notice submitted by the appellant after giving an opportunity of hearing to the appellant ".

Upon perusal of the said order, it is apparent that the only contention which weighed with the appellate authority was in respect of the allegation of misappropriate of the sum of Rs.15,000/- made under charge No.1. It must, therefore, be held that rest of the contentions raised in the appeal memo were rejected by the appellate authority. The said order was not challenged further and has, thus, become final. In my view, therefore, the petitioner can not be permitted to raise the said contention once again in the present petition. However, I have permitted Mr. Supehia to raise the said contention. Under application Ex.9, the petitioner demanded statements of several persons and the report of the preliminary inquiry held against the petitioner. In answer to the said demand, the petitioner was informed that the documents referred to at Item Nos. 1, 2, 3, 5, 6, 7, and 11 in his application Ex.9, did not exist and no such statements were recorded. He was further informed that the statement of Babu Karim was confidential and should not be furnished. Be it noted that, under charge No.1, above referred Babu Karim was the person through whom the petitioner was alleged to have disposed of the Muddamal articles. The said charge has not been proved and, therefore, even if such statement were recorded and were not furnished to the petitioner, he has not been prejudiced in any manner. The petitioner had also demanded the report of the preliminary inquiry. It is well settled law that the report of the preliminary inquiry is not required to be furnished to the delinquent. Under application Ex.19, the petitioner demanded inspection of the same documents which could obviously be not given. On the same day i.e. on 1st October, 1987, the petitioner also made an application Ex.20 for as many as 124 documents. The said application was rejected on 17th October, 1987. On perusal of the list of said 124 documents, it appears that the said documents pertain to the matters in respect of the witnesses. It is the case of the petitioner that he needed the said documents to ascertain the credibility of the witnesses. I am of the view that the disciplinary authority was right in rejecting the said application. A delinquent is certainly entitled to all the documents which are relied upon by the disciplinary authority and all the documents which may be necessary for his defence. However, the delinquent is not entitled to make a roving inquiry in respect of the witnesses by demanding the documents as has been done in the present case. It is not even the case of the petitioner that any of the documents which were relied upon by the disciplinary authority was not furnished to the petitioner. The

documents demanded by the petitioner were obviously not relevant for his defence. I am, therefore,of the view that the inquiry held against the petitioner is not vitiated for violation of principles of natural justice and fair play, as alleged by Mr. Supehia. The contention, therefore, is rejected.

6. It appears that after the inquiry was over, the appeal preferred by the petitioner was allowed second time on 28th February, 1990 and the matter was remanded to the disciplinary authority, in the year 1991 the petitioner wrote two letters to the disciplinary authority. The said letters were obviously not part of the records of the matter. Under the said letters, the petitioner has once again administered threats and used oppressive language against the disciplinary authority. The said two letters have been referred to by the disciplinary authority while imposing punishment of compulsory retirement upon the petitioner. In paragraph-33 of the impugned order, the disciplinary authority has discussed finding on charge No.6 and oppressive language used by the petitioner in the past, for which he was issued 'Censure'. He has also referred to the above referred two letters in which the petitioner once again has used oppressive language. Mr. Supehia has, therefore, contended that while imposing punishment, the disciplinary authority has relied upon the documents which do not form part of the record and, therefore, the order of punishment is based on extraneous material and requires to be quashed and set aside. I am afraid, I can not accept this contention. It is evident that the disciplinary authority has merely referred to those letters to strengthen his reasoning and has not relied upon the said letters to impose punishment upon the petitioner. The punishment has been imposed entirely on the charges proved against the petitioner and no extraneous material has been taken into consideration for imposing punishment upon the petitioner.

7. Next Mr. Supehia has contended that the penalty of compulsory retirement from service imposed upon the petitioner is too harsh, more so, when the petitioner had already put service of nearly 28 years. He has submitted that such major penalty can be imposed only in a gross case of corruption, misappropriation or a misconduct involving moral turpitude. I am unable to accept this argument also. The charges proved against the petitioner are grave enough to warrant a major punishment. The petitioner being an officer of the court was required to keep the Muddamal articles in safe-custody and to maintain proper and complete record. The petitioner is

found to have disposed of the Muddamal articles for personal gain and that too by forging an order in the name of the concerned Judge. (though 'forgery' is not the charge imputed against the petitioner, it is proved that the petitioner had added certain articles of Muddamal after the order was made by the respondent No.1) The petitioner has been found to have destroyed some of the court record and has also used oppressive language and has administered threats to the disciplinary authority. Neither of these misconducts can be viewed lightly. In the present case, the petitioner has been found to be administering threats repeatedly, for which he was also once issued "Censure". Thus, using of such oppressive language and administering threats of going on fast by the petitioner amounts to "breach of discipline" which would justify the order of major punishment.

8. Mr. Supehia has though contended that the findings recorded by the Enquiry Officer are perverse, has not advanced any argument in support of the said contention. Nonetheless, I have perused the entire record of the Enquiry Officer, I do find that the findings have been recorded after discussing the evidence in great detail. None of the findings recorded by the Enquiry Officer can be said to be perverse.

9. In view of the above discussion, I do not find merits in any of the contentions raised by Mr. Supehia. Petition is, therefore, dismissed. Rule is discharged. There shall be no order as to costs.

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JOSHI